

Remarks

Applicants have canceled claims 2-10, 12, 14-16, and 22-23 without prejudice or disclaimer and added new claims 25-45. Accordingly, upon entry of the present amendment, original claims 1, 11, 13, 17-20, 24 and new claims 25-45 will be pending.

New claims 25-45 have been added in order to claim additional embodiments of the subject matter of the provisionally-elected group and sequence. Support for these claims can be found throughout the specification as filed. In particular, support for claims 25-45 can be found in the specification, for example, at page 243, line 28 to page 246, line 5; at Table 1, page 265, row 9; at page 756, line 30 to page 758, line 16; and at page 819, lines 24-29. Support for claims 30-31 and 40-41 can be found in the specification, for example, at page 773, line 1 to page 775, line 4; at page 815, line 26 to page 817, line 21; and at page 826, line 31 to page 827, line 27. Support for claims 32 and 42 can be found in the specification, for example, at page 819, lines 20-22; and at page 822, lines 3-7. Support for claims 33 and 43 can be found in the specification, for example, at page 822, line 19 to page 825, line 30.

In addition, the title has been amended to more precisely reflect the presently claimed invention. Accordingly, no new matter has been added.

I. The Restriction Requirement

Pursuant to Paper No. 5, mailed August 18, 2003, the Examiner has required an election under 35 U.S.C. § 121 of one of Groups I-VII. The Examiner contends that the inventions are distinct, each from the other.

In response, Applicants provisionally elect, *with traverse*, the invention of Group II, represented by original claim 11, and new claims 25-45, drawn to polypeptides, for App. No.: 10/050,873

further prosecution. Moreover, in order to be fully responsive, Applicants hereby elect sequences corresponding to protein encoded by the deposited HOGCK20 cDNA and/or that having an amino acid sequence disclosed in SEQ ID NO:222. New claims 25-45 read on the elected sequences. Applicants reserve the right to file one or more divisional applications directed to non-elected inventions should the restriction requirement be made final.

With respect to the Examiner's division of the invention into nine groups and the reasons stated therefore, Applicants respectfully disagree and traverse. Even assuming, *arguendo*, that Groups I-VII represented distinct and independent inventions, restriction remains improper unless it can be shown that the search and examination of all groups would entail a "serious burden." M.P.E.P. § 803. In the present situation, although the Examiner has argued that Groups I-VII are directed to divergent subject matter and are separately classified, Applicants nonetheless submit that a search of the claims of any of the groups would also provide useful information for the claims of the other groups. For example, in many if not most publications disclosing a protein, the authors also disclose nucleic acids encoding the protein, and antibodies to the protein. Thus, since the searches for proteins, nucleic acids encoding such proteins, and antibodies to such proteins commonly overlap, the combined search and examination of such compositions would not entail a serious burden.

Accordingly, in view of M.P.E.P. § 803, the claims of all of Groups I-VII should be searched and examined together in the present application. Applicants therefore respectfully request that the restriction requirement under 35 U.S.C. § 121 be reconsidered and withdrawn.

Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.


Conclusion

Entry of the above amendment is respectfully solicited. In view of the foregoing remarks, Applicants believe that this application is now in condition for examination, and an early notice to that effect is urged. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicant would expedite the examination of this application.

Finally, if there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136, such an extension is requested and the appropriate fee should also be charged to our Deposit Account.

Dated: September 22, 2003

Respectfully submitted,

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